



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/682,507	10/10/2003	Michiharu Arimoto	008612-03103	9880

79297 7590 08/29/2011

Dickinson Wright PLLC
James E. Ledbetter, Esq.
International Square
1875 Eye Street, N.W., Suite 1200
Washington, DC 20006

EXAMINER

CLOUD, JOIYA M

ART UNIT	PAPER NUMBER
----------	--------------

2444

MAIL DATE	DELIVERY MODE
-----------	---------------

08/29/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/682,507	ARIMOTO ET AL.	
	Examiner	Art Unit	
	JOIYA CLOUD	2444	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1-27 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1-27 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

This action is responsive to communications filed 08/10/2010. Claims 1-27 are PENDING. Applicant's arguments have been carefully considered, but a moot in view of new ground(s) of rejection.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/10/2010 has been entered.

Allowable Subject Matter

Claim 1-27 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 1st paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 17-27 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 101, set forth in this Office action.

Claim Rejections - 35 USC § 112

Claims 1-27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not

described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. As to exemplary claim 1, the limitation "sequence of when the action contents are actually communicated" has not been described in the specification. Examiner has also found Figures 8 and 9 and page 5 of the instant specification to be absent of any description regarding the above limitation. Appropriate correction or citing of specific portions of the specification for support of these newly added limitations is required in the next response.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Exemplary claim 17 recites a "network monitoring program recorded on a computer readable medium..." With regard to claims 17-27, Applicant's instant specification states "*a computer can be stored in various kinds of storage media and also can be transferred through a communication medium. The storage media include, for example, a flexible disk, a hard disk, a magnetic disk, a magnet-optical disk, CD-ROM, a DVD, a ROM cartridge, a RAM memory cartridge with battery backup, 15 a flashmemory cartridge and a RAMcartridge. Also, the communication medium includes a wire communication medium such as a telephone line, a wireless communication medium such as a microwave line, and the Internet is also included.*" Given the broadest reasonable interpretation of this phrase, a computer readable medium includes non-transitory embodiments as well as transitory embodiments. However, transitory

Art Unit: 2444

forms or software per se are not statutory (*In re Nuijten*, 84 USPQ2d 1495). A claim that covers both statutory and non-statutory embodiments embraces subject matter that is improperly directed to non-statutory subject matter. Examiner suggests Applicant amend the instant claim to include a computer readable storage medium (e.g. memory), specifically stating **“a non-transitory computer readable storage medium.”**

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joiya Cloud whose telephone number is 571-270-1146. The examiner can normally be reached Monday to Friday from on 7:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter A. Pappas can be reached on (571) 272-7646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-7646. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Joiya M Cloud/

Examiner, Art Unit 2444

/Peling A Shaw/

Primary Examiner, Art Unit 2444

August 22, 2011